

4/3/02

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

IN RE: §  
§  
EDDIE STEWART AND THRISA KILLION §  
Debtors. § CASE NO. 499-42881-DML-13  
§

**MEMORANDUM OPINION AND ORDER**

Before the Court is the Standing Chapter 13 Trustee's ("Trustee") Amended Trustee's Objection to Proof of Claim Filed on Behalf of Oakwood Acceptance Corporation (the "Objection"). The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and this is a core proceeding under 28 U.S.C. § 157(b)(2)(B). This Memorandum constitutes the Court's findings of fact and conclusions of law. *See* Fed R. Bankr. P. 7052 and 9014.

**I.**  
**Background**

Debtors commenced this case on June 1, 1999. At the time of their filing they were in possession of a manufactured home (the "Home") pursuant to a Retail Installment Agreement held by Oakwood Acceptance Corporation ("OAC"). On July 1, 1999 OAC filed a proof of claim as a fully secured creditor for \$27,637.77.

On January 27, 2000, the Court<sup>1</sup> entered an Agreed Order on Relief from Stay (the "Agreed Order") which set forth payments to be made in the future by Debtors to OAC to retain the Home. The agreement between Debtors and OAC was subsequently incorporated into Debtors' chapter 13 plan (the "Plan"), which was confirmed on March 1, 2000. Notice of the

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<sup>1</sup>Per Hon. Massie Tillman.

confirmation hearing advised secured creditors that their collateral would be valued contemporaneously with consideration of confirmation of the Plan. The Home was valued at an amount equal to OAC's claim: \$27,637.77.

Subsequently, Debtors defaulted under the Agreed Order and OAC repossessed the Home. On May 4, 2000, the Trustee filed a notice which was mailed, *inter alia*, to OAC, that he would make no further payments to OAC "because the Trustee received . . . [a] NOTICE OF PRIVATE SALE." (Emphasis in original)

OAC made no response to the Trustee's notice and took no further action in the case until January 16, 2001, when it filed an Amended Proof of Claim (the "Claim") asserting a unsecured, deficiency claim of \$15,486.58. This is the Claim to which the Trustee has objected.

## **II. Discussion**

This Court heard the Objection on November 20, 2001, and requested that the parties submit briefs regarding whether OAC could amend its original claim. The parties have filed briefs, and this matter is now ripe for decision.

While the briefs of the parties have focused on the *res judicata* effect of confirmation of the Plan and theories underlying amendability of a claim, the Court believes this matter is disposed of pursuant to section 506(b) of the Bankruptcy Code. Section 506(b) provides that, if "an allowed secured claim is secured by property the value of which. . . is greater than the amount of such claim, there shall be allowed to the holder of such claim. . . any reasonable fees, costs, or charges provided for under the agreement under which such claim arose."

In the instant case, the entirety of the Claim relates to charges<sup>2</sup> incurred by OAC *after* the commencement of the case.<sup>3</sup> OAC claims entitlement to these charges under its Retail Installment Agreement with Debtors.<sup>4</sup> Thus OAC would be entitled to these postpetition charges only if they fell within section 506(b). Since OAC's collateral was worth only the amount of its original claim (\$27,637.77), OAC was not overcollateralized and so is not entitled to post-petition charges otherwise assessable under the Retail Installment Agreement.<sup>5</sup>

Moreover, OAC's delay in raising the deficiency issue after the Trustee gave notice that he would cease paying is sufficiently prejudicial to creditors and the estate to provide good reason to bar any amendment to the original claim, even if it were proper. *See* 9 COLLIER ON BANKRUPTCY ¶ 3001.04[1] (15th ed. rev. 2002).

### **III. Order**

For the foregoing reasons, it is therefore

ORDERED that the Trustee's Objection be sustained; and it is further

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<sup>2</sup>OAC's deficiency is made up of a loan payoff amount of \$29,955.81 which apparently includes interest, a pick-up expense of \$3,000, legal fees (\$1,844.54), commission (\$1,237.54), delivery (\$1,596.90) and refurbishment and appliance costs of \$5,452.06. Against these amounts OAC credited the Debtors \$26,500.00 for sale of the Home and \$1,100.27 for unearned insurance premiums.

<sup>3</sup>The Claim does not fall within section 1305(a) of the Bankruptcy Code.

<sup>4</sup>OAC brief filed December 14, 2001, p. 4.

<sup>5</sup>Arguably OAC might have a "deficiency" of \$37.50

ORDERED that Amended Proof of Claim of OAC filed January 16, 2001 be, and the same hereby is, wholly disallowed.

Signed this the 3rd day of April, 2002.

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DENNIS MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE